Supreme Court of the United States

OCTOBER TERM, 1909.

No. 189.

WILLIAM H. JONES, JOHN HILL, AND EDGAR POE LEE, Plaintiffs in Error,

vs.

ANDREW J. MONTAGUE, GOVERNOR OF VIRGINIA; D. Q. EGGLESTON, SECRETARY OF THE COMMONWEALTH OF VIRGINIA; MORTON MARYE, AUDITOR OF PUBLIC ACCOUNTS OF VIRGINIA, AND OTHERS, Defendants in Error.

WRIT OF ERROR.

No. 190.

SELDEN, *et als.*,

Appellants,

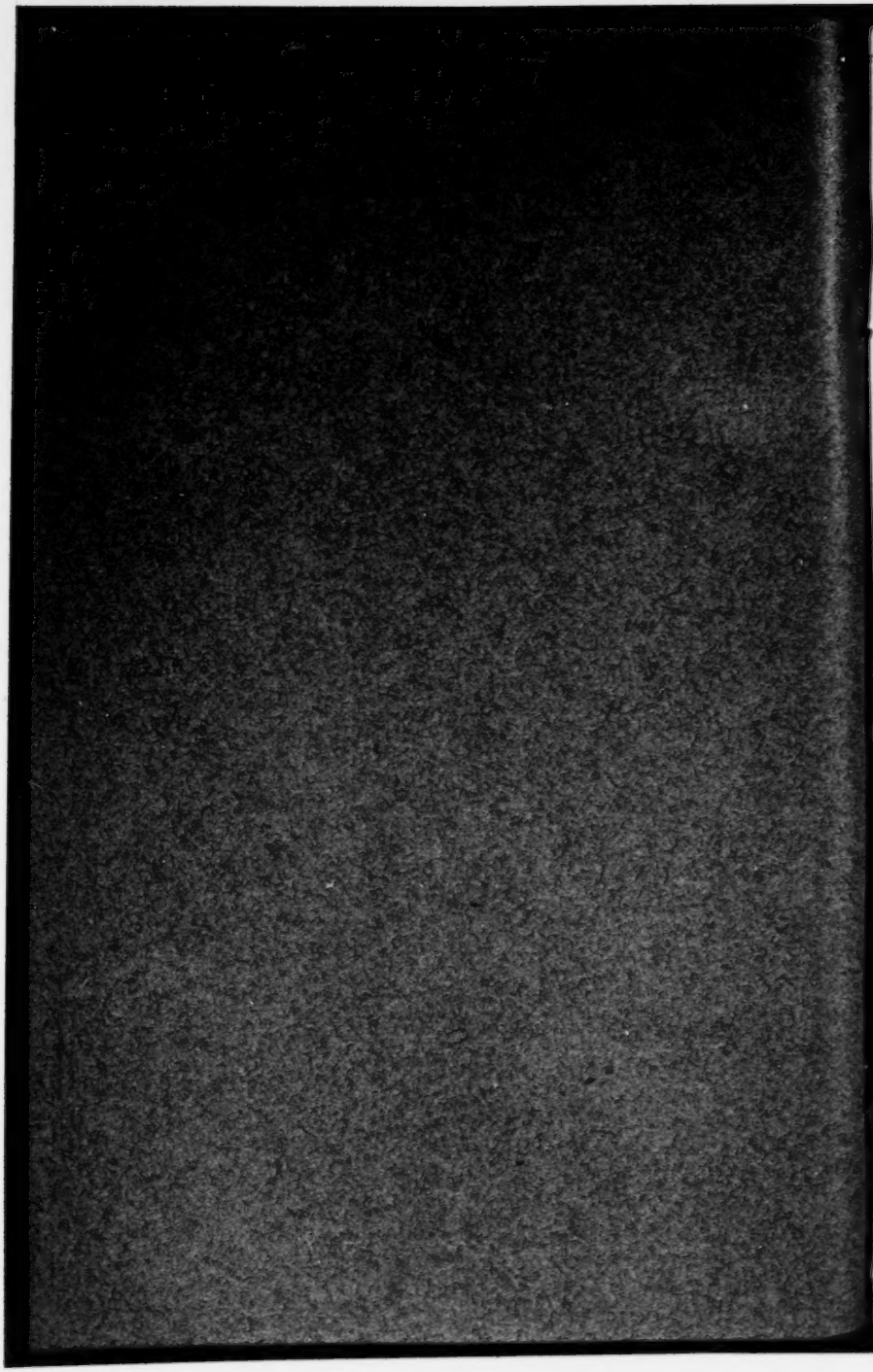
vs.

MONTAGUE, *et al.*,

Appellees.

APPEAL.

BRIEF FOR PLAINTIFFS IN ERROR ON MOTION TO DISMISS THE WRIT OF ERROR IN THE PROHIBITION CASE, AND FOR THE APPELLANTS ON THE MOTION TO DISMISS THE APPEAL IN THE SUIT BROUGHT FOR INJUNCTION.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1903. No. 189.

WILLIAM H. JONES, JOHN HILL and EDGAR POE LEE, Plaintiffs in Error, vs. ANDREW J. MONTAGUE, Governor of Virginia; D. Q. EGGLESTON, Secretary of the Commonwealth of Virginia; MORTON MARYE, Auditor of Public Accounts of Virginia, and others, Defendants in Error.	Writ of Error.
SELDEN, *et als.*, vs. MONTAGUE, *et al.*	No. 190. Appeal.

Brief for Plaintiffs in error on Motion to Dismiss the Writ of Error in the Prohibition Case, and for the Appellants on the Motion to Dismiss the Appeal in the Suit brought for injunction.

As the point raised in both of these cases is identical, this brief is filed in both.

I. The motion to dismiss is founded upon a misapprehension of the character of the relief sought in the two proceedings. The fact that the Board of State Canvassers, after the decisions, did a particular act, does not destroy either the substance of the petition or complaint, or the continuing character of the injury sought to be redressed.

II. Both the bill and the petition sought relief from the continuing oppression of a conspiracy, to which the defendants were parties.

III. The conspiracy averred was an agreement between this Board of Canvassers and others, first to have enacted and then to recognize as laws a series of invalid null enactments, schedules and ordinances; and so recognizing them, to do a series of unlawful acts under color of those invalid laws.

IV. The effect of the operations of the conspiracy upon the plaintiffs and the class on behalf of which the petition and complaint were exhibited, was to disregard their lawful registration and right to vote, and the laws permitting them to do so; to make up unlawful voting lists, from which they were excluded; to hold unlawful elections, in which they were not allowed to participate; to have the false returns so made up, certified to this State Board of Canvassers, and to have these defendants, as participants in the conspiracy, recognize those false returns as lawful and compute results from them.

V. The substance of the complaint was the existance of this conspiracy, to which the defendants were parties; the allegation that not only in this particular instance, but in every future case, unless restrained, they would recognize these laws as valid and continue to ignore the rights of the plaintiffs and petitioners.

VI. The substance of the injury complained of was not the single threatened act of counting the returns

of that particular election, but the threatened recognition by the defendants, as the law of the State, of invalid acts, ordinances and schedules of a convention, for their guidance then and thereafter; under which recognition the class complaining would then and thereafter be deprived of their voice in the political affairs of the State.

VII. The prayer of the bill and of the petition was in substance not only to restrain and prohibit the doing of the particular act then threatened, but to declare the laws, schedules and ordinances invalid then and thereafter; to perpetually enjoin this Board from proceeding then or thereafter to compute returns made up under the invalid laws, schedules and ordinances; to declare the law invoked as the warrant of their action to be null, void and of no effect; and to compel them to compute then and thereafter only returns which had been made of votes cast and certified under the valid laws of the State.

VIII. The law complained of was a continuing law; the injury complained of was a continuing injury; the test of the validity of the law, while it arose on an attempt to prevent that particular act, cannot be evaded, if the decision below was erroneous, by pleading that the particular act complained of has been accomplished before the error is reversed.

If the law was invalid; if the defendants were part of a conspiracy to treat these void laws as valid; and if the erroneous decision left them in a position to continue their injuries against the complainants, under an invalid law; it is no answer to the prayer of the complainants, praying for adjudication on the law, which, so long as it stands, continues to injure them, that before it could be adjudged null, they were subjected to one injury under its operation. Being a continuing law, it is a continuing injury, and the opportunity is recurring to these defendants to do these complainants other and continuing injuries under it until and unless the defendants are enjoined.

IX. The appeal should not be dismissed, because, before it was made effectual, the first injury was accomplished to the complainants, and it is manifest that if it was an injury, it is only the first of a series of injuries to be inflicted upon them, unless the defendants are enjoined. The case is not at all like those in which a single act is the subject of injury. The defendants are a continuous body, with continuous duties of identically the same character as each function is performed, and those duties are dependent for their validity upon the validity of the law under which the returns are made to them. The rights of the parties complainant are continuous rights and rights of a recurring nature of which they are deprived at recurring intervals, so long as the defendants are allowed to invoke and act under a void law. If those laws are invalid, it would be impossible, upon the contention of the defendants, to test them, so long as the Court below should continue to decide in defendants' favor; for each time a bill or petition was exhibited the writ would be denied, the act would be done and nothing would be left to bring up here, if the point of defendants be well taken.

X. The wrong complained of in these cases was and is a continuing wrong, to-wit: The recognition by the defendants of an invalid law as the guide of their action.

XI. The injury complained of is a continuing injury, to-wit: The deprivation to the class suing, of their rights as voters; a deprivation made effectual through the recognition by the defendants of the invalid laws, which it is sought to impeach; a deprivation which is continuing until they are declared invalid by the Court of last resort.

For which reason the motion should be denied.

JNO. S. WISE,
For Petitioners and Complainants.